In the High Court of Punjab and Haryana at Chandigarh.

CR No.3058 of 2007
Date of decision: 09.07.2007

Dharam Pal ....Petitioner.

Versus

Hoshiyar Singh and others. ....Respondents.

CORAM: HON'BLE MR. JUSTICE PERMOD KOHLI.

Present: Mr.Sandeep Panwar, Advocate, for the petitioner.

PERMOD KOHLI, J.

By invoking jurisdiction of this Court under Article 227 of the Constitution of India, the present Civil Revision has been filed against the order dated 01.08.2006, passed by the learned Motor Accidents Claims Tribunal, Kaithal. The petitioner is an un-fortunate father, whose un-married young son aged about 20 years, died in a Motor Vehicular Accident which took place in the year 2004. He along with his wife filed a claim petition before the learned M.A.C.T., Kaithal, claiming compensation. The Tribunal vide its award dated 27.08.2005, awarded an amount of Rs.1,66,000/- to the petitioner and his wife alongwith interest. The Tribunal while awarding compensation directed the deposit of the amount in the fixed deposit in equal shares in favour of the claimants in a nationalised bank for a period of five years with liberty to the claimants to apply for the release of the amount in case of any eventuality. Dharampal, petitioner made an application on 29.07.2006 seeking release of his share of the compensation amount on the ground that he intends to settle his younger

son, namely, Balraj, in business. In the application filed before the Tribunal, it was stated that his son is working as an Electrician and he wants to settle him. The Tribunal appears to have recorded the statement of the petitioner and rejected the application on the ground that no documentary proof has been placed on record to establish that the need of the petitioner is genuine. The Tribunal, accordingly, held that it is not satisfied about the genuineness of the need and declined the prayer.

I have heard the learned counsel for the petitioner at length.

The petitioner has placed on record two certificates: one issued by V.K. Electricals, Kaithal, stating therein that Balraj son of the petitioner had been working in his shop for two years and he could start his own business. There is another certificate by the Sarpanch of Gram Panchayat, Deoban (Kaithal), certifying that the petitioner's son Balraj had started working as Electrician in the village by taking the shop on rent. It is also not in dispute that the petitioner is the father of Balraj and he has asked for release of the amount of his share of compensation.

The Tribunal while declining the prayer referred two judgments of the Apex Court reported as Kerala State Road Transport Corporation Vs. Susamma Thomas and others, 1994 (2) P.L.R., 01 and Lilaben Udesing Gohel Vs. Oriental Insurance Company Limited, 1996 (3), P.L.R. 328.

In the Kerala State Road Transport Corporation's case (Supra), the Hon'ble Supreme Court relying upon certain principles enunciated in the cases of Union Carbide Corporation Vs. Union of India, (1991) 4, SCC, 584 and Muljibhai Vs. United India Insurance Co. Limited, (1982) 23 (1) Gujarat Law Reporter, 756, directed the Accident Claims Tribunals to observe the guidelines noticed in paragraph 17 of the judgment. It may be

convenient to reproduce the guidelines which are as under:-

> "(i) The Claims Tribunals should, in the case of minors, invariably order the amount of compensation awarded to the minor invested in long term fixed deposits at least till the date of the minor attaining majority. The expenses incurred by the guardian or next friend may, however, be allowed to be withdrawn;
>
> (ii) In the case of illiterate claimants also the Claims Tribunal should follow the procedure set out in (i) above, but if lump sum payment is required for effecting purchases of any movable or immovable property, such as, agricultural implements, rickshaw, etc., to earn a living, the Tribunal may consider such a request after making sure that the amount is actually spent for the purpose and the demand is not a rogue to withdraw money;
>
> (iii) In the case of semi-literate persons the Tribunal should ordinarily resort to the procedure set out in (i) above unless it is satisfied, for reasons to be stated in writing, that the whole or part of the amount is required for expanding any existing business or for purchasing some property as mentioned in (ii) above for earning his livelihood, in which case the Tribunal will ensure that the

amount is invested for the purpose for which it is demanded and paid;

(iv) In the case of literate pesons also the Tribunal may resort to the procedure indicated in (i) above, subject to the relaxation set out in (ii) and (iii) above, if having regard to the age, fiscal background and strata of society to which the claimant belongs and such other considerations, the Tribunal in the larger interest of the claimant and with a view to ensuring the safety of the compensation awarded to him thinks it necessary to so order;

(v) In the case of widows the Claims Tribunal should invariably follow the procedure set out in (i) above.

(vi) In personal injury cases if further treatment is necessary, the Claims Tribunal on being satisfied about the same, which shall be recorded in writing, permit withdrawal of such amount as is necessary for incurring the expenses for such treatment;

(vii) In all cases in which investment in long term fixed deposits is made it should be on condition that the bank will not permit any loan or advance on the fixed deposit and interest on the amount invested is paid monthly directly to the claimant or his guardian, as the case may be;

(viii) In all cases Tribunal should grant the claimants

> liberty to apply for withdrawals in case of an emergency. To meet with such a contingency, if the amount awarded is substantial the Claims Tribunal may invest it in more than one fixed deposit so that if need be one such F.D.R can be liquidated."

The judgment in Muljibhai's case (supra) was followed by the Full Bench of the Gujarat High Court in the case of New India Insurance Co. Limited Vs. Kamlaben and others, 1993 (1) Gujarat Law Reporter, 779. This judgment of the Full Bench became the subject matter of challenge before the Apex Court in the case of Lilaben Udesing Gohel Vs. Oriental Insurance Company Limited and others, AIR 1996 S.C., 1605, and other connected matters. Simultaneously, another Public Interest Litigation also came to be filed before the Apex Court challenging the directions issued regarding deposit of the compensation amount. All these connected matters were decided by the Apex Court in Lilaben Udesing Ghoel's case (Supra). The Apex Court on consideration of the entire issue approved the guidelines in Muljibhai's case (Supra) as approved in Kerala State Road Transport Corporation's case (Supra) and made further observations which thus reads as under:-

> "Before we part we must observe that even though the guidelines laid down in Muljibhai's case have been approved and applied by this Court in the aforementioned two cases, many Motor Accidents Claims Tribunals and even some of the High Courts in other parts of the country do not follow them. We are also told that in claims that are settled in or outside the

Court or Tribunal, including Lok Adalats or Lok Nyayalayas, these guidelines are overlooked. We would like to make it absolutely clear that in all cases in which compensation is awarded for injury caused in a motor accident, whether by way of adjudication or agreement between the parties the Court/Tribunal must apply these guidelines. We must add one further guideline to the effect that when the amount is invested in a fixed deposit, the bank should invariably be directed to affix a note on the Fixed Deposit Receipt that no loan or advance should be granted on the strength of the said FDR without the express permission of the Court/Tribunal which ordered the deposit. This will eliminate the paractice of taking loans which may be upto 80% of the amount invested and thereby defeating the very purpose of the order. We do hope that the Courts/Tribunals in the country will not succumb to the temptation of permitting huge withdrawals in the hope of disposing of the claim. We are sure that the Courts/Tribunals will realise their duty towards the victims of the accident so that a large part of the compensation amount is not lost to them. The very purpose of laying down the guidelines was to ensure the safety of the amount so that the claimants do not become victims of unscrupulous persons and unethical agreements or arrangements. We do hope our anxiety to protect the claimants from exploitation by such elements

will be equally shared by the Courts/Tribunals".

It is in due deference to the guidelines laid down by the Apex Court that the Tribunals started issuing directions for deposit of the amounts of compensation in nationalised banks etc. to safeguard the interest of the claimants and to ensure that the compensation amount is not frittered away in the hands of the unscrupulous persons and the victims are able to utilise the same for well-being of the family of the deceased/victim, sufferer of the accident. The guidelines noticed herein above, are exhaustive enough to prevent the compensation flowing into hands of un-scrupulous persons. The purpose of these guidelines is not to deprive the victims of the accidents or their heirs from utilising the amount of compensation for the well being of the family or even for the settlement of the legal heirs in life. It is for this purpose guideline No.VIII grants liberty to the claimants to approach the Tribunal to seek release of the amount for genuine and bona-fide need. It is in this context that the claim of the present petitioner is required to be examined.

Undoubtedly, the claimants were the parents of the deceased young boy, who died in a road accident. The claim for compensation is for the well-being of the family members of the deceased-victim of the accident. The father of the deceased has applied for the release of the amount of compensation to settle his other son in business. He has placed on record certificate of experience of his other son, namely, Balraj who has acquired the knowledge of Electrician. Another certificate is from the Sarpanch of the Gram Panchayat of Deoban, certifying that the boy has taken a shop on rent in the village, where he is carrying on the electrician work. The Tribunal has lost sight of these two certificates. The Tribunal in

a mechanical manner rejected the application on the ground that no documentary evidence has been produced and the simple oral testimony of the petitioner is not sufficient to judge the genuine need of the petitioner. I am at a loss to appreciate such an approach of the Tribunal. The purpose and object of the guidelines laid down by the Supreme Court is to ensure that compensation amount does not fall in the hands of unscrupulous persons and slip away from the claimants, who are otherwise victims of the accident. At the same time, the purpose of grant of compensation is to enable the family of the deceased to overcome their financial difficulties as also to provide little solace. The compensation is for the well-being of the family of the deceased-victims of the accident. If the amount of compensation is not allowed to be utilised by the family for any purpose, it serves no purpose. Here is a case where the father, whose one son had died pre-maturely in a road accident, intends to settle his other son in business by making investment out of the amount of compensation awarded to him. Why this need cannot be said to be genuine, is not understandable. In a recent case, reported as H.S. Ahammed Hussain Vs. Irfan Ahammed, AIR 2002, SC 2483, the Apex Court observed that where the amount is required by the parents of the victim of accident, there is no necessity to issue directions of deposit of the amount in a nationalised bank. The Apex Court observed as under:-

> "Learned counsel for the appellant lastly submitted that the amount of compensation payable to mothers of the victims should not have been directed to be kept in fixed deposit in a nationalised bank. In the facts and circumstances of the present case, we are of the view that the amount of

compensation awarded in favour of the mothers should not be kept in a fixed deposit in a nationalised bank. In case, the amounts have not been already invested, the same shall be paid to the mothers, but if, however, invested by depositing the same in fixed deposit in a nationalised bank, there may be its premature withdrawal in case the parties so intend".

In the facts and circumstances of this as also taking into consideration the guidelines laid down by the Apex Court, I am of the considered opinion that the impugned order passed by the M.A.C.T. is not sustainable and the same is hereby set aside and I direct the release of share of compensation of the petitioner in his favour by the concerned bank forthwith. No costs.

(Permod Kohli)
Judge

July 09, 2007.
BLS

Note: To be referred to Reporter YES